

Santosh Kumar and ors Vs. State of Bihar and anr

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Court : Patna

Decided On : May-24-2012

Appellant : Santosh Kumar and ors

Respondent : State of Bihar and anr

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Miscellaneous
No.23942 of 2010

===== 1. Santosh
Kumar.

2. Sonu Kumar, both sons of Harihar Rai, resident of Mohalla-Indrapuri, Road No.
2A, police station-Patliputra, Town and District-Patna.

3. Suresh Kumar Singh son of late Basudev Singh, resident of village+P.S.
Rupaspur, Dist.-Patna. Petitioner/s Versus 1. The State of Bihar.

2. Smt. Bimla Sahay, wife of Ravi Shankar Sahay, resident of Mohalla- Indrapuri,
Road no. 2A, police station- Patliputra, Town and District- Patna. Opposite
Party/s =====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN ORAL ORDER (Per:
HONOURABLE MR. JUSTICE VIKASH JAIN

24. 01-2012 1. The present application has been filed for quashing the order dated
23.12.2009 as regards the petitioner in connection with Patliputra P.S. Case No.

227 of 2009 for the offences alleged under Sections 147, 447, 323, 354, 420, 504 and 506 of the Indian Penal Code.

2. According to the complaint filed by Smt. Bimla Sahay opposite party no. 2, it is stated that her husband Ravi Shankar Sahay had entered into an agreement with the petitioner Harihar Rai and his wife Gayatri Devi (now deceased), for the purchase of certain property in Indrapuri Mohalla, Text Book Colony, P.S. Patliputra, Patna for a total consideration of Rs. 6,00,000/- out of which 3,65,000/- had already been paid at the time of agreement and it was assured by the petitioner that the sale deed would be registered. Despite repeated request, Patna High Court Cr.Misc. No.23942 of 2010 (6) dt.24-01-2012 2/4 however, the sale deed was not registered by the petitioner. It has further been alleged that some persons started visiting the land and put up a sign board of Grih Pravesh Private Limited and on inquiry one of the persons disclosed his name as Nilu Sinha who claimed to have purchased the land. Upon the complainants claiming it to be her land the said Nilu Sinha is said to have hurled abuse after giving threats to the complainant. It has further been alleged that again on 19.09.2009 about 50 persons including the petitioner and the said Nilu Sinha entered her house to perform Puja and upon the complainants protest hurled abuses and the said Nilu Sinha slapped and pushed her small daughter, as a result of which she sustained injury. It has further been alleged that the petitioner and his two sons Santosh Kumar and Sonu Kumar along with others were fraudulently trying to take possession of her land and have been threatening to assault and kill the complainant.

3. Learned counsel for the petitioner submits that the allegations raised in the complaint are false and in any event, in view of the complainants own averments, it is obviously only a case involving civil dispute where the petitioner has been accused of trying of wrongfully take possession of the land. It has further been stated that the petitioner is the owner of the Patna High Court Cr.Misc. No.23942 of 2010 (6) dt.24-01-2012 3/4 building in which and he is residing on the ground floor whereas the complainant is his tenant living on the first floor thereof. It is his case that the agreement for sale of the land which is being relied upon by the complainant is a forged one and there is adequate material which has been

collected in course of investigation to support the stand of the petitioner.

4. It has further been stated that Title Eviction Suit No. 55 of 2010 has been filed by the petitioner before the learned Sub-Judge-1, Patna for evicting the complainant and the same is pending.

5. Despite valid service of notice issued to the opposite party no. 2, none is present on her behalf when the case was called out today, nor even when the matter was heard earlier on 23.01.2012 from which it appears that the complainant is not interested in contesting the matter.

6. On perusal of the complaint petition and considering the submissions made on behalf of the petitioner, this Court is of the view that the nature of the allegations are predominantly of civil nature and to allow the prosecution to continue against the petitioner in such circumstances would amount to abuse of process of Court.

7. In the above circumstances, the impugned order of Patna High Court Cr.Misc. No.23942 of 2010 (6) dt.24-01-2012 4/4 cognizance dated 23.12.2009 is hereby quashed and the application, in so far as the present petitioner is concerned, is accordingly allowed. (Vikash Jain, J.) Devendra/-

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